

REMARKS

The Office Action mailed September 9, 2003 has been received and the Examiner's comments carefully reviewed. Claims 15 and 55 have been amended. No new subject matter has been added. Claims 1-15, 17-25 and 35-55 are currently pending. Applicants respectfully submit that the pending claims are in condition for allowance.

Rejections Under 35 U.S.C. §112

The Examiner rejected claim 55 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. Applicants have amended claim 55 to clarify that comparing the patient's lipid level to a previously measured lipid level is to determine a patient's blood oxygen transport. Support for this amendment is found in the specification, for example, on page 2-3, lines 31-3, and page 16, lines 11-14 and 17-20. Applicants respectfully submit that claim 55 is now in condition for allowance.

Double Patenting

The Examiner rejected claim 55 under the judicially created doctrine of obviousness-type double patenting over claim 1 of U.S. Patent No. 6,037,181. Applicants respectfully traverse this rejection. To obviate this rejection, however, a terminal disclaimer of the term extending beyond the term of U.S. Patent 6,037,181 has been filed herewith.

The Examiner also provisionally rejected claims 1-7, 9, 12-19, 23-25, and 42 under the judicially created doctrine of obviousness-type double patenting over claims 1-12, 15-19, 24, 34-46, 39-40, 48-50, and 52-53 of co-pending Application No. 09/645,236. Applicants respectfully traverse this rejection. To obviate this rejection, however, a terminal disclaimer of the term extending beyond the term of a Letters Patent issued for Application No. 09/645,236 has been filed herewith.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 15, 17, 19, 22-23, 36 and 41-42 under 35 U.S.C. §103(a) as being unpatentable over Page et al.(from Chapter 9-Exp. Simulation of Oxygen Transport in Microvessels cited in the Information Disclosure Statement filed December 29, 2000). Applicants respectfully traverse this rejection; however, Applicants have amended claim 15 to advance this application to allowance.

Claim 15 has been amended to incorporate subject matter similar to object-to claim 37. In particular, claim 15 has been amended to clarify that the sample receiving system of the red blood cell transport system detachably couples to the apparatus to take in a sample of a red blood cell. Support for claim 15 is found in the specification, for example, on page 23, lines 11-13 and 20-23.

Page does not disclose a sample receiving system of a transport system that detachably couples to the apparatus. Rather, Page discloses a reservoir having a specially constructed micropipette affixed to one port of the reservoir. Page 133, section 9.2.1.

Page does not teach or suggest that the reservoir is detachably coupled to the micropipette. Page does not teach or suggest that the micropipette is detachably coupled to the capillary lumen where gas exchange occurs. Because Page fails to teach or suggest a sample receiving system detachably coupled to the apparatus, Applicants respectfully that independent claim 15, and dependent claims 17, 19, 22-23, 36, and 41-42 are patentable.

Rejections Under 35 U.S.C. §103

The Examiner rejected claims 18 and 20-21 under 35 U.S.C. §103(a) as being unpatentable over Page et al.(from Chapter 9-Exp. Simulation of Oxygen Transport in Microvessels cited in the Information Disclosure Statement filed December 29, 2000) in view of Applicants' admitted prior art. Applicants respectfully traverse this rejection.

Claims 18 and 20-21 depend upon claim 15. In view of the remarks regarding independent claim 15, further discussion regarding the independent patentability of dependent claims 18 and 20-21 is believed to be unnecessary. Applicants submit that dependent claims 18 and 20-21 are in condition for allowance.

Allowable Subject Matter

The Examiner objected to claims 8, 10-11, 35, 37-40, and 43-54, but indicated these claims would be allowable if rewritten in independent form incorporating all the limitations of the base claim and any intervening claims. Applicants thank the Examiner for this notification.

SUMMARY

It is respectfully submitted that each of the presently pending claims (claims 1-15, 17-25 and 35-55) is in condition for allowance and notification to that effect is requested. The Examiner is invited to contact Applicants' representative at the below-listed telephone number if it is believed that prosecution of this application may be assisted thereby.

Although certain arguments regarding patentability are set forth herein, there may be other arguments and reasons why the claimed invention is patentably distinct. Applicants reserve the right to raise these arguments in the future.

Respectfully submitted,



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